UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ADA MERCEDES CONDE VIDAL and IVONNE ÁLVAREZ VÉLEZ; MARITZA LÓPEZ AVILÉS and IRIS DELIA RIVERA RIVERA; JOSÉ A. TORRUELLAS IGLESIAS and THOMAS J. ROBINSON; ZULMA OLIVERAS VEGA and YOLANDA ARROYO PIZARRO; JOHANNE VÉLEZ GARCÍA and FAVIOLA MELÉNDEZ RODRÍGUEZ; and PUERTO RICO PARA TOD@S,

Plaintiffs,

v.

ALEJANDRO J. GARCÍA PADILLA, in his official capacity as Governor of the Commonwealth of Puerto Rico; ANA RIUS ARMENDARIZ, in her official capacity as Secretary of the Health Department of the Commonwealth of Puerto Rico; WANDA LLOVET DÍAZ, in her official capacity as Director of the Commonwealth of Puerto Rico Registrar of Vital Records; and MELBA ACOSTA FEBO, in her official capacity as Director of the Treasury in Puerto Rico,

Defendants,

and

CAPELLANES INTERNACIONALES CRISTIANOS LEÓN DE JUDÁ, INC.

Proposed Intervenor-Defendant.

Civil Action No. 3:14-cv-01253-PG

OPPOSITION TO CAPELLANES INTERNACIONALES CRISTIANOS LEÓN DE JUDÁ, INC. MOTION TO INTERVENE PURSUANT TO RULE 24(A)(2)

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Plaintiffs Ada M. Conde Vidal and Ivonne Álvarez Vélez, by and through their attorney; and Plaintiffs Maritza López Avilés and Iris Delia Rivera Rivera; José A. Torruellas Iglesias and Thomas J. Robinson; Zulma Oliveras Vega and Yolanda Arroyo Pizarro; Johanne Vélez García and Faviola Meléndez Rodríguez; and the organization Puerto Rico Para Tod@s (collectively "Plaintiffs"), by and through their attorneys, respectfully submit the following memorandum of law opposing the Motion to Intervene Pursuant to Rule 24(a)(2)[1] filed by Capellanes Internacionales Cristianos León de Judá, Inc. [Docket No. 32].

INTRODUCTION

Plaintiffs are five loving, committed same-sex couples who reside in Puerto Rico and Puerto Rico Para Tod@s, an organization focused on the rights, equality and social inclusion of lesbian, gay, bisexual, transsexual and transgender ("LGBT") people and their families in Puerto Rico. Plaintiffs challenge the constitutionality of Article 68 of the Civil Code of Puerto Rico, 31 L.P.R.A. § 221, and other Puerto Rico laws (collectively, the "Marriage Ban") that prohibit Plaintiffs from marrying or having their lawful marriages entered into in other jurisdictions recognized as valid in Puerto Rico.

This action was originally filed by Plaintiffs Conde Vidal and Álvarez Vélez on March 25, 2014. On June 25, 2014, all Plaintiffs filed an Amended Complaint, and, on August 27, 2014, Defendants filed a motion to dismiss. On August 28, 2014, Capellanes Internacionales Cristianos León de Judá, Inc. ("Christian Chaplains" or "Proposed Intervenor"), filed a motion[2]

[1] Although Christian Chaplains labels its motion as one for intervention as of right under Rule 24(a)(2), its memorandum of law also argues that it should be permitted to intervene under Rule 24(b). Through this memorandum, Plaintiffs address and oppose both types of intervention. Proposed Intervenor does not seek intervention under Rule 24(a)(1), and that rule has no application here, because there is no federal statute purporting to give Christian Chaplains or any person a right to intervene in this action. *See* Fed. R. Civ. P. 24(a)(1).

[2] In its motion, Proposed Intervenor states that it relies upon a Declaration of Proposed Intervenor-Defendant's representative, but has filed no such declaration, nor does it cite to it in its memorandum of law.

to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure on behalf of the eight members of its organization who allegedly reside in Puerto Rico.

In its motion to intervene, Proposed Intervenor argues that, should Plaintiffs prevail, its members "will be obligated by law to marry same sex couples." Int. Br. at 4. This argument, however, is based upon an erroneous and unsupported reading of Puerto Rico's marriage laws. As religious officiants, Christian Chaplains will not be required to perform a marriage ceremony for anyone they do not wish to marry. Puerto Rico's laws, as well as the First Amendment to the United States Constitution, protects and will continue to protect their right to decide which ceremonies to officiate or to decline. Indeed, a decision in Plaintiffs' favor would "not mandate any change for religious institutions, which may continue to express their own moral viewpoints and define their own traditions about marriage. If anything, the recognition of same-sex marriage expands religious freedom because some churches . . . desire to perform same-sex wedding ceremonies but are currently unable to do so." *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1214 (D. Utah 2013) (citing Brief of *Amici Curiae* Bishops *et al.*, at 8-15, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (arguing that the inherent dignity of lesbian and gay individuals informs the theology of numerous religious beliefs, including the Unitarian Universalist Church and the United Church of Christ)).

Put simply, the choices and practices of Proposed Intervenor regarding marriage are entirely unaffected by the relief sought by Plaintiffs in this litigation. Therefore, Proposed Intervenor has no interest at stake in this case. Similarly, with regard to permissive intervention, Proposed Intervenor fails to demonstrate a common question of law or fact necessary for this court to permit its intervention in this case. Finally, neither Proposed Intervenor nor its members meet the requirements of Article III standing.

Therefore, this Court should deny Christian Chaplains' motion to intervene.

ARGUMENT

I. PROPOSED INTERVENOR FAILS TO MEET THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

A. Applicable Standard

Rule 24(a)(2) provides that, "on timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

The First Circuit applies a four-part test for determining when intervention as of right is available, and an "applicant who fails to meet any one of these requirements cannot intervene." *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41(1st Cir. 1992); *see also Combustion Eng'g Caribe, Inc. v. Geo P. Reintjes Co., Inc.*, No. 02-2466, 2007 U.S. Dist. LEXIS 38112, *9 (D.P.R. May 24, 2007). The test requires: (1) that the application be timely; (2) that the applicant claim an interest relating to the property or transaction which is the subject of the action; (3) that the disposition of the action may, as a practical matter, impair or impede that applicant's ability to protect the interest; and (4) that the applicant shows that the interest will not adequately be represented by existing parties. *See Mosbacher*, 966 F.2d at 41; *see also R&G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009); *Caterino v. Barry*, 922 F.2d 37, 39-40 (1st Cir. 1990); *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 637 (1st Cir. 1989). As Proposed Intervenor fails to satisfy the four requirements, its application to intervene under Rule 24(a)(2) should be denied.

B. Proposed Intervenor does not have a protectable interest.

An intervenor must have an interest that is "direct and significantly protectable." *See*

Ungar v. Arafat, 634 F.3d 46, 51 (1st Cir. 2011) (quoting *Donaldson v. United States*, 400 U.S. 517 (1971)). "An undifferentiated, generalized interest in the outcome of the case at hand is not . . . sufficient to meet the standards of Rule 24(a)(2)." *Walgreen Co. v. de Melecio*, 194 F.R.D. 23, 26 (D.P.R. 2000) (quoting *Pub. Serv. Co. of New Hampshire v. Patch*, 136 F.3d 197 (1st Cir. 1998)). The First Circuit has emphasized that "the intervenor's claims must bear a sufficiently close relationship to the dispute between the original litigants and that [t]he interest must be direct, not contingent." *Mosbacher*, 966 F.2d at 42 (internal citation and quotation marks omitted). Furthermore, the determination of this requirement "is colored to some extent by the third factor—whether disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest." *Id*.

Here, Proposed Intervenor asserts that it has a significant protectable interest in this litigation arising from "fundamental constitutional rights," Int. Br. at 10, implying that its members purportedly will be obligated to conduct marriages for same-sex couples. Int. Br. at 11. It also suggests that its members' refusal to perform such marriages would result in criminal prosecution. Int. Br. at 6, 13. Proposed Intervenor contends, therefore, that its members will be forced to choose either to adhere to their religious beliefs and cease being marriage officiants, or to comply with marriage laws in violation of their religious beliefs. These assertions have no basis in law or practice and cannot form a protectable interest in this case. Indeed, Christian Chaplains' entire purported basis for intervention is premised on a farfetched reading of the Commonwealth's marriage laws.

Religious leaders have the right to choose which marriages they perform. Under Puerto Rico law, "[a]ll regularly licensed or ordained priests or other ministers of the Gospel, [and] Jewish rabbis . . . ***may*** celebrate the marriage rites between all persons legally authorized to marry." 31 L.P.R.A. § 243 (emphasis added). Such language is clearly permissive in nature and

not obligatory, contrary to what Proposed Intervenor suggests. *See, e.g.*, Int. Br. at 12 ("Proposed Intervenors will be directly affected in the performance of their duties and obligations if PR Marriage Laws are ruled unconstitutional."). An authorized religious officiant in Puerto Rico is not required to indiscriminately perform *any* marriages permitted by Puerto Rico law, much less those that conflict with the officiant's religious beliefs. Under Proposed Intervenor's implausible reading of Puerto Rico's marriage laws, a Catholic priest opposed to interfaith marriages or to marrying people who had previously divorced would nonetheless be compelled to perform those marriages, and a rabbi could not refuse to officiate a Hindu wedding. Of course that is not what Puerto Rico's marriage laws require, and Plaintiffs' challenge, like similar challenges in federal courts across the country, does not involve or affect that religious discretion. *See Kitchen v. Herbert*, 755 F.3d 1193, 1227 (10th Cir. 2014) ("[R]eligious institutions remain as free as they always have been to practice their sacraments and traditions as they see fit. . . . The right of an officiant to perform or decline to perform a religious ceremony is unaffected by today's ruling."); *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128, 1143 (D. Or. 2014) ("Overturning the discriminatory marriage laws will not upset Oregonians' religious beliefs and freedoms."); *Bourke v. Beshear*, 996 F. Supp. 2d 542, 554 (W.D. Ky. 2014) ("Our religious beliefs and societal traditions are vital to the fabric of society. Though each faith, minister, and individual can define marriage for themselves, at issue here are laws that act outside that protected sphere."); *Henry v. Himes*, 2014 U.S. Dist. LEXIS 51211, *40 (S.D. Ohio Apr. 14, 2014) (same).[3]

[3] Similarly, state courts that have found statutory state marriage bans to violate their state constitutions have affirmed that the right of religious officiants to perform or decline to perform a marriage remains unaltered by their rulings. *See Griego v. Oliver*, 316 P.3d 865, 871 (N.M. 2013) ("Our holding will not interfere with the religious freedom of religious organizations or clergy because (1) no religious organization will have to change its policies to accommodate same-gender couples, and (2) no religious clergy will be required to solemnize a marriage in contravention of his or her religious beliefs."); *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 475 (Conn. 2008)

To be sure, Puerto Rico law requires those who possess legal authority to perform marriages to follow certain procedural requirements when solemnizing a marriage. However, none of the various statutory provisions cited by Proposed Intervenor establish any *obligation* on the part of any religious officiant to perform a marriage ceremony. Proposed Intervenor cites 24 L.P.R.A. § 1163, which simply obligates every person who has performed a marriage under their legal authority "to deliver . . . to the keeper of the Register of the district in which said ceremony took place, the marriage license and the affidavit presented by the contracting parties . . . together with the marriage certificate . . . ." 24 L.P.R.A. §1163. This provision contains no requirement that anyone must perform a particular marriage ceremony. Nor does 24 L.P.R.A. § 1301, which merely provides that persons authorized to perform marriages may incur criminal penalties if they perform a marriage without the requirements of a marriage license or fail to comply with the procedural requirements of the Vital Statistics Registry. *See id.*at § 1301(e). The provision does not obligate ministers and rabbis to perform particular marriages, or impose sanctions for their failure to do so. Similarly, 33 L.P.R.A. § 4757, not cited by Proposed Intervenor, makes it a misdemeanor to solemnize a marriage without being authorized to do so, or to marry another person in a marriage prohibited by civil law, but contains no directive that any officiant authorized to solemnize a marriage *must* perform any particular marriage ceremony.[4] Thus,

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("Religious freedom will not be jeopardized by the marriage of same sex couples because religious organizations that oppose same sex marriage as irreconcilable with their beliefs will not be required to perform same sex marriages or otherwise to condone same sex marriage or relations."); *In re Marriage Cases*, 183 P.3d 384, 451-52 (Cal. 2008) ("[A]ffording same-sex couples the opportunity to obtain the designation of marriage will not impinge upon the religious freedom of any religious organization, official, or any other person; no religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs.").

[4] Christian Chaplains also cites to *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), but that case in which for-profit corporations brought a claim under the Religious Freedom and Restoration Act of 1993, 42 U.S.C. §§ 2000bb, *et seq*., in relation to the application of specific provisions of the Patient Protection and Affordable Care Act, 124 Stat. 119 (2010), involved an *obligation* on employers and thus has no application here.

whatever the outcome of this litigation, Proposed Intervenor's rights and obligations will remain the same: they may perform marriages in accordance with their religious beliefs, and for any couple they may choose to marry, they will continue to be required to comply with the procedural requirements established by law. Plaintiffs' success in this case would not add to, or otherwise alter, Proposed Intervenor's current legal obligations. Indeed, "no court can require churches or other religious institutions to marry same-sex couples or any other couple, for that matter. This is part of our constitutional guarantee of freedom of religion." *Bourke*, 996 F. Supp. 2d at 555.

What is more, Proposed Intervenor has failed to establish a sufficient nexus between Plaintiffs' claims and any legally protected interest that is any greater than the general concerns of any private individuals who may support the Marriage Ban in the first place. To the extent Proposed Intervenor argues that it has some broader generalized interest in the Marriage Ban being upheld, because it contends this case may change "strongly held historical, religious, cultural, social, and public policy," Int. Br. at 18, such a generalized interest cannot form the basis for intervention. *See Walgreen Co.*, 194 F.R.D. at 26. "It is settled beyond peradventure . . . that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right." *Patch*, 136 F.3d at 205. Were the rule to be otherwise, there would be no limitation on who could participate in a lawsuit.

Nor do Proposed Intervenor and its members have a right to substitute their voice or their judgment for that of Defendants simply because they disagree with how Defendants may proceed in this case. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2664 (2013) (private parties may not represent state's interests in defending the constitutionality of its laws); *see also Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 149-50 (1967) (describing the Supreme Court's "consistent policy . . . to deny intervention to a person seeking to assert some

general public interest in a suit in which a public authority charged with the vindication of that interest is already a party").

Thus, Proposed Intervenor has shown no basis for its assertion that its members' will face *any* cognizable harm in the event that Plaintiffs prevail on their constitutional claims. This action does not threaten Christian Chaplains' religious beliefs or its members' right to perform marriage ceremonies only for different-sex couples, if they so choose. *Cf. Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 965 n.29 (Mass. 2003) ("Our decision in no way limits the rights of individuals to refuse to marry persons of the same sex for religious or any other reasons."). Because the outcome of this case has no potential effect on Proposed Intervenor's alleged interest, there is no basis for intervention.

C. Proposed Intervenor's ability to protect its interests, if any, is not impaired by denial of intervention.

Because Proposed Intervenor has no protectable interest in the case, denying intervention creates no potential impairment to its ability to protect an interest. Proposed Intervenor's argument that a ruling striking down the Marriage Ban "would adversely impact their interest in appealing a judgment that purports to impact their marriage related rights and duties," Int. Br. at 15, carries no weight because Christian Chaplains has no legally cognizable interest in the right to appeal without some underlying protectable interest in the case. Further, as discussed in Section III.B, *infra*, Proposed Intervenor would lack standing to appeal in the event that the government Defendants declined to appeal a ruling striking down the Marriage Ban.

D. To the extent Proposed Intervenor has an interest in this case, such interest is adequately represented by Defendants.

Again, because Proposed Intervenor has no protectable interest, it cannot be heard to complain that its interest is inadequately represented by Defendants. But even if Proposed Intervenor did have a protectable interest, it "must produce some tangible basis to support a

claim of purported inadequacy." *See Patch*, 136 F.3d at 208. Moreover, this burden may be "ratcheted upward" in cases in which the government itself defends an interest. *See id.* at 207 (holding that proposed intervenors had to rebut a presumption that state public utilities commissioners adequately represented their interests). Here, Proposed Intervenor has not identified, much less demonstrated, any inadequacy in Defendants' representation, save for the argument that Christian Chaplains have a *different* interest – which, as discussed, is not at stake here.

* * *

Because failure to meet even one prong of the standard for intervention as of right is fatal to an application, *see Mosbacher*, 966 F.2d at 41, Proposed Intervenor's motion should be denied. Christian Chaplains' request fails to meet every requirement for intervention.[5] In fact, trial courts have denied similar motions to intervene as of right to defend state marriage bans filed by county clerks (who, unlike Proposed Intervenors here, do not have the discretion to

[5] In addition to the failure of Proposed Intervenor's motion to meet the three requirements discussed above, it is untimely. The timeliness inquiry focuses on "actual or constructive knowledge and/or notice of possible jeopardy," *Puerto Rico Tel. Co., Inc. v. San Juan Cable, LLC*, 298 F.R.D. 28, 32 (D.P.R. 2014), and "the count [for such notice] begins no later than the time when the intervenor became aware that its interest in the case would no longer be adequately protected by the [existing] parties." *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992) (internal citation and quotation marks omitted). Here, without explanation for its delay, Proposed Intervenor moved to intervene five months after the suit was originally filed, and after briefing was already underway. Such unexplained delay weighs against a finding of timeliness. *See, e.g., Greenblatt*, 964 F.2d at 1231 (failure to act for three months, "though armed with full knowledge," led to finding of untimeliness). Proposed Intervenor does not allege that it only recently became aware of the suit or was able to determine that Defendants would not adequately represent its interests. Instead, it alleges only that it has a fundamentally different interest from Defendants such that it "cannot be adequately represented by the Defendants." Int. Br. at 16. That different interest, if it exists, has existed since the filing of the case.

Further, intervention by Christian Chaplains will cause considerable prejudice to Plaintiffs. This prejudice consideration is a "vital element of a timeliness inquiry." *Greenblatt*, 964 F.2d at 1232. Plaintiffs continue to suffer concrete harms and stigmatic injuries every day the Marriage Ban remains in place. Intervention will result in additional briefing and will only delay the adjudication of Plaintiffs' constitutional rights and create unnecessary complexity in the management of this litigation. Finally, where there is a low likelihood of success, this factor weighs against intervention. *See Greenblatt*, 964 F.2d at 1232-33. Here, Proposed Intervenor has not made a showing that it is likely to succeed on the merits—to the contrary, it has demonstrated no protectable interest at stake in this case.

decline to process certain marriage licenses). *See, e.g.*, Transcript of Proceedings at 49-50, *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Ore. May 15, 2014) (No. 13-cv-01834) (denying intervention by organization on behalf of members that included a county clerk, a wedding planner, and a citizen who voted in favor of the state's marriage ban); Order, *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. Jan. 17, 2014) (No. 13-cv-00395) (denying intervention as of right by county clerk).

II. PROPOSED INTERVENOR DOES NOT MEET THE STANDARD FOR PERMISSIVE INTERVENTION.

Proposed Intervenor's additional argument that it should be granted permissive intervention should also be denied. Rule 24(b) provides that, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). A court may "consider almost any factor rationally relevant . . . in granting or denying the motion." *United States v. Puerto Rico*, 227 F.R.D. 28, 30 (D.P.R. 2005); *see also Daggett v. Comm'n on Gov. Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999). "Additional relevant factors include the nature and extent of the intervenors' interests, the degree to which those interests are adequately represented by other parties, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *H.L. Hayden Co. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986) (citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326 (9th Cir.1977)).

First, Rule 24(b) requires a proposed intervenor to show a claim or defense "that shares with the main action a common question of fact or law." Proposed Intervenor argues, to the

contrary, that its defenses to Plaintiffs' claims "present[] questions of law and fact *that are distinct*" from those otherwise involved in this action. Int. Br. at 20 (emphasis added). The issue in this case is whether the Marriage Ban violates Plaintiffs' equal protection and due process rights. Proposed Intervenor does not offer to present any arguments on this question. Instead, it seeks intervention on the unsupported—and mistaken—basis that its members' religious freedom could be affected by the outcome. But as explained above, that argument is based on a misreading of the law. Proposed Intervenor thus presents no common question of law or fact that would warrant intervention. *Cf.* Order, *Massachusetts v. United States HHS*, No. 09-11156, 2010 U.S. Dist. LEXIS 40118, *2-3 (D. Mass. Apr. 22, 2010) (no common question of law or fact where proposed intervenor challenged the holding of *Goodridge*, 798 N.E.2d. 941, on state law grounds, but case at issue involved the validity of the Defense of Marriage Act, 1 U.S.C. § 7, under federal constitutional law).

Second, this Court must consider the prejudicial effect intervention would have on Plaintiffs' rights. Intervention here has the potential to delay the adjudication of Plaintiffs' constitutional rights, as Proposed Intervenor would be permitted to respond to Plaintiffs' Amended Complaint and participate in briefing that is already underway—prolonging the litigation and extending irreparable injuries that the Marriage Ban continues to inflict upon Plaintiffs with each passing day. *Cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional freedoms "for even minimal periods of time, unquestionably constitutes irreparable injury."). Such delay is highly prejudicial and weighs against granting Proposed Intervenor's motion.

Third, Proposed Intervenor argues it should be permitted to intervene because this is a case of "great social import" that could affect the civil institution of marriage in Puerto Rico. But that argument, if accepted, would untenably support intervention by virtually anyone.

Furthermore, Proposed Intervenor fails to explain how such interest differs from Defendants' interest in defending the Marriage Ban, or how Defendants' representation in this case is not adequate. As discussed above, Defendants are vigorously defending Puerto Rico's Marriage Ban, *see, e.g.*, Defendants' Motion to Dismiss [Docket No. 31], and "where, . . . intervention as of right is decided based on the government's adequate representation, the case for permissive intervention diminishes, or disappears entirely." *Tutein v. Daley*, 43 F. Supp. 2d 113, 131 (D. Mass. 1999) (internal citations omitted).

Finally, "permissive intervention ordinarily must be supported by independent jurisdictional grounds." *Int'l Paper Co. v. Jay*, 887 F.2d 338, 346 (1st Cir. 1989) (citations and quotations omitted). Thus, "[a] party seeking permissive intervention must set forth a claim or defense that falls within the federal court's subject matter jurisdiction." *Ricci v. Okin*, 770 F. Supp. 2d 438, 445 (D. Mass. 2011). Here, Proposed Intervenor provides no grounds upon which this court may assert jurisdiction over its motion. Indeed, Christian Chaplains lacks any standing and, even if allowed to intervene, would have no standing to appeal an adverse judgment. *See* Section III, *infra.*

Proposed Intervenor's request for permissive intervention should therefore be denied.

III. PROPOSED INTERVENOR LACKS STANDING.

At the outset of its memorandum, Proposed Intervenor states that it has third-party standing to assert two protectable interests of its members. First, Proposed Intervenor asserts standing on the basis that its members have an interest because they are licensed to perform marriages in the Commonwealth, Int. Br. at 6-7, and second, it has an interest in providing the court with advocacy on appeal, in the event of a ruling adverse to Defendants, which Defendants are "unlikely [to] zealously defend." Int. Br. at 7. Neither of these purported interests provides a basis for standing. Indeed, the Supreme Court has repeatedly held that "Article III standing is

not to be placed in the hands of concerned bystanders, who will use it simply as a vehicle for the vindication of value interests." *Hollingsworth*, 133 S. Ct. at 2663 (citing *Diamond v. Charles*, 476 U.S. 54, 61 (1986)) (internal quotations omitted).

A. Proposed Intervenor lacks standing to intervene in the district court.

Every case before a federal court must meet Article III's case and controversy requirement. While the First Circuit has not addressed the question directly, other courts have found that the interest articulated for intervention also must satisfy the Article III standing requirement. *See Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir.), *cert. denied sub nom. Ill. Pro-Life Coal., Inc. v. Keith*, 474 U.S. 980 (1985) (intervenor must have interest sufficient for "right to maintain a claim for the relief sought"); *United States v. 36.96 Acres of Land*, 754 F.2d 855, 859 (7th Cir. 1985), *cert. denied sub nom. Save the Dunes Council, Inc. v. United States*, 476 U.S. 1108 (1986) ("interest of a proposed intervenor must be greater than the interest sufficient to satisfy the standing requirement"). *Cf. Cotter v. Massachusetts Ass'n of Minority Law Enforcement Officers*, 219 F.3d 31, 34 (1st Cir. 2000) ("[I]n the ordinary case, an applicant who satisfies the 'interest' requirement of the intervention rule is almost always going to have a sufficient stake in the controversy to satisfy Article III as well."). Just as Proposed Intervenor does not meet the interest requirement of Rule 24(a)(2), it also fails to satisfy the Article III standing requirement.

First, as articulated in Section 1.B, *supra*, Proposed Intervenor's asserted interest in performing marriages only for different-sex couples is not affected by Plaintiffs' claims. Proposed Intervenor's hints at a more generalized interest, framed as one belonging to the "Puerto Rico people [sic]" and the "transform[ation of] social and family matters completely," Int. Br. at 20, are just as unavailing. Article III standing requires: "(1) an 'injury-in-fact'; (2) that is 'fairly traceable' to the proceeding below; and (3) is 'likely' to be 'redressed by a favorable

decision.'" *Sea Shore Corp. v. Sullivan*, 158 F.3d 51, 54 (1st Cir. 1998) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Proposed Intervenor can point to no injury suffered by or threatened against its members, because there is no basis for its concern that its members will be forced to solemnize marriages against their religious convictions. Nor can an asserted broader interest in upholding the Marriage Ban provide standing. As the Supreme Court has repeatedly held, "a generalized grievance, no matter how sincere, is insufficient to confer standing." *Hollingsworth*, 133 S. Ct. at 2662. Moreover, Proposed Intervenor cannot represent the rights of the general public. *Id.* at 2663 ("[A] litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.").

Proposed Intervenor has identified no concrete or particularized harm – no injury-in-fact – inflicted upon its members; it has demonstrated no link between any harm to its members and the current litigation; and it has shown no possibility that the court is positioned to redress any harm to its members in this proceeding. Thus, Christian Chaplains fails to meet the standing requirements of Article III and should not be permitted to intervene in this case. *Cf.* Order, *Geiger v. Kitzhaber*, No. 14-35427 (9th Cir. Aug. 27, 2014) (finding that neither Oregon wedding service provider members' objections to facilitating same-gender marriage ceremonies nor county clerk's personal objections were sufficient to establish Article III standing).

B. Proposed Intervenor would have no standing to appeal.

Proposed Intervenor additionally makes the unfounded assertion that in the event that this court rules that the Marriage Ban is unconstitutional, "it is unlikely that [Defendants] will zealously defend" the laws on appeal. Int. Br. at 7. Even assuming *arguendo* that turn of events, Proposed Intervenors could not step in to defend the Marriage Ban. It is clear that the standing requirement "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64

(1997); *see also Hollingsworth*, 133 S. Ct. 2652 (holding intervenor had no standing to appeal where the state defendants chose not to pursue an appeal); *U.S. v. AVX Corp.*, 962 F.2d 108, 112 (1st Cir. 1992) (holding that "association which has intervened in the trial court and which seeks to prosecute an appeal notwithstanding that the parties on whose side it intervened have eschewed further appeals, must independently pass the test of Article III standing"); *Sea Shore Corp.*, 158 F.3d at 54 ("As an intervenor seeking singlehandedly to appeal a judgment, the [intervenor] must independently pass the test of Article III standing.").

Indeed, *Hollingsworth v. Perry* turned on the Court's decision that nongovernmental defendant-intervenors had no standing to seek appellate review of a district court's decision finding a state marriage ban unconstitutional. 133 S. Ct. at 2668 ("We have never before upheld the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to. We decline to do so for the first time here."). Since then, both the Third and Ninth Circuits have declined to allow proposed defendant-intervenors to seek appellate review of district court decisions finding state marriage bans violate the Equal Protection and Due Process Clauses of the Constitution. *See* Order, *Geiger*, No. 14-35427 (9th Cir. Aug. 27, 2014); Order, *Whitewood v. Sec'y Pa. Dep't of Health*, No. 14-3048 (3d Cir. July 3, 2014).

Because Proposed Intervenor has no standing now, nor would a ruling overturning the Marriage Ban bestow standing, Christian Chaplains would have no standing to appeal, and thus its assertion that it should be permitted to intervene for the purposes of some potential appeal should be rejected.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Christian Chaplains' motion to intervene.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Omar Gonzalez-Pagan, an attorney, certify that on September 22, 2014, I served upon counsel for all parties by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Omar Gonzalez-Pagan